

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

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| <i>In re</i>   | :<br>:  |
| THE FINANCIAL OVERSIGHT AND<br>MANAGEMENT BOARD FOR PUERTO RICO, | : PROMESA<br>: Title III                              |
| as representative of   | : Case No. 17-BK-3283 (LTS)                           |
| THE COMMONWEALTH OF PUERTO RICO,<br><i>et al.</i> ,              | : (Jointly Administered)<br>:<br>:                    |
| Debtors.*  | :<br>:<br>:   |
|  | ----- X -----   |
| <i>In re</i>   | :<br>:<br>:   |
| THE FINANCIAL OVERSIGHT AND<br>MANAGEMENT BOARD FOR PUERTO RICO, | : PROMESA<br>: Title III                              |
| as representative of   | : Case No. 17-BK-04780-LTS                            |
| PUERTO RICO ELECTRICAL POWER<br>AUTHORITY (PREPA),               | : <b>Court Filing Relates Only to PREPA</b><br>:<br>: |
| Debtor.  | :<br>----- X -----                                    |

**URGENT MOTION OF SOLUS TO FILE UNDER SEAL UNREDACTED MOTION TO  
COMPEL TESTIMONY PURSUANT TO RULE 30(b)(6) FROM U.S. BANK IN  
CONNECTION WITH PREPA RSA SETTLEMENT MOTION**

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\* The Debtors in these title III cases, along with each Debtor's respective Title III case number listed as a bankruptcy case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747).

To the Honorable United States Magistrate Judge Judith Gail Dein:

SOLA LTD, Solus Opportunities Fund 5 LP, Ultra Master LTD, and Ultra NB LLC (collectively, “Solus”), as lenders to the Puerto Rico Electric Power Authority (“PREPA”) under the Trade Finance Facility Agreement, dated as of July 20, 2012, among PREPA and Citibank, N.A., as predecessor to the existing lenders thereunder (as amended, the “Citibank Credit Agreement” and together the Credit Agreement, dated as of May 4, 2012, among PREPA, Scotiabank, and the lenders party thereto, the “Fuel Lines”) respectfully submits this *Urgent Motion of Solus to File Under Seal Unredacted Motion to Compel Testimony Pursuant to Rule 30(b)(6) from U.S. Bank in Connection with PREPA RSA Settlement Motion* (the “Motion to Seal”), and hereby states as follows:

**RELIEF REQUESTED**

1. Solus has already filed on the docket (No. 17-04780) a partially-redacted version of the *Motion of Solus to Compel Testimony Pursuant to Rule 30(b)(6) from U.S. Bank in Connection with PREPA RSA Settlement Motion* [Docket. No. 1469] (the “Motion”). This Motion to Seal seeks the Court’s permission to file a full and unredacted version of the Motion under seal to prevent the disclosure of certain information that Solus has received from Citibank, N.A. (“Citibank”) that Citibank designated as “Confidential” pursuant to the *Stipulation and Protective Order in Connection with Discovery Regarding the Joint Motion of Puerto Rico Electric Power Authority and AAFAF Pursuant to Bankruptcy Code Sections 362, 502, 922, and 928, and Bankruptcy Rules 3012(A)(I) and 9019 for Order Approving Settlements Embodied in the Restructuring Support Agreement and Tolling Certain Limitation Periods* [Docket. No. 1322] (the “Stipulated Protective Order”).

## **JURISDICTION AND VENUE**

2. The United States District Court for the District of Puerto Rico has subject matter jurisdiction over this matter pursuant to section 306(a) of the Puerto Rico Oversight, Management and Economic Stability Act (“PROMESA”). Venue is proper subject to PROMESA § 307(a).

3. The statutory basis for the relief requested herein is in sections 105(a) of the Bankruptcy Code and Bankruptcy Rule 9018, made applicable to these proceedings by PROMESA §§ 301(a) and 310, and Local Rule 9018-1 of the Local Bankruptcy Rules for the District of Puerto Rico (the “Local Rules”).

## **BASIS FOR RELIEF**

4. On July 16, 2019, Solus filed a public, partially-redacted version of the Motion on this Court’s docket. The Motion seeks an order from this Court compelling U.S. Bank to produce a witness to provide testimony, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, in connection with the *Joint Motion of Puerto Rico Electric and Power Authority and AAFAF Pursuant to Bankruptcy Code Sections 362, 502, 922, and 928, and Bankruptcy Rules 3012(A)(I) and 9019 for Order Approving Settlements Embodied in the Restructuring Support Agreement and Tolling Certain Limitation Periods* [Docket. No. 1235] (the “Settlement Motion”). Solus describes in and annexes to the Motion certain material Citibank has designated as commercially sensitive and confidential under the Stipulated Protective Order. This material is central to the arguments outlined in the Motion and necessary to demonstrate the contemporaneous understanding of Citibank regarding the relationship of the Fuel Line Lenders vis-à-vis the Bondholders (as those terms are defined in the Motion). Specifically, Solus

discusses, quotes from and annexes certain material provided by Citibank regarding its analysis underlying the Citibank Credit Agreement.

5. Under the Stipulated Protective Order, any documents that have been designated as “Confidential” are required to be “filed or submitted under seal consistent with the local rules for the United States Bankruptcy Court for the District of Puerto Rico, and any applicable case management procedures.” Stipulated Protective Order ¶ 7. Therefore, because the material described herein has been designated as “commercial, financial, trade secret, [and] research and development . . . of a proprietary nature that is not known to, or has not generally been available to, the public” constituting “Confidential Material” provided for in the Receivership Protective Order (as defined and encompassed in the Stipulated Protective Order), Solus has filed a redacted version of the Motion and is requesting that the full and unredacted version of the Motion, as well as the relevant accompanying exhibit, be filed under seal, in compliance with the Stipulated Protective Order.

6. Additionally, as detailed further in the Motion, the necessity of the Motion became apparent to Solus late in the evening on July 15, 2019, the night before the deadline to file Discovery Motions under the *Order (A) Granting the Urgent Motion in Limine to Exclude Testimony Offered by the Energy Non-Profits, the Environmental Non-Profits and SOMOS, (B) Granting in Part the Urgent Motion in Limine to Exclude Testimony Offered by UTIER, SREAAEE, and Windmar, and (C) Modifying the Current Briefing Schedule Pertaining to Discovery Motions* [Case No. 17-03283, Docket. No. 7942] (the “July 12 Discovery Order”).

7. On the afternoon of July 16, this Court entered the *Tenth Amended Notice, Case Management and Administrative Procedures* [Case No. 17-03283, Docket No. 8027] (the “Case Management Order”) outlining updated requirements for redactions and filing under seal.

Counsel for Solus informed Citibank of the Citibank materials to be filed under seal in accord with Solus's obligations under the Stipulated Protective Order and sought Citibank's consent to file a full and unredacted version of the Motion and the underlying exhibits on the public docket in accord with the standards articulated in the new Case Management Order. However, Citibank was not able to give its consent under the compressed timeframe. Solus, therefore, in an abundance of caution, now files the instant Motion to Seal in order to comply with the Stipulated Protective Order. *See* Stipulated Protective Order ¶ 7. Counsel for Solus further requested that Citibank inform of any intention to oppose this Motion to Seal, and Citibank does not object to the relief sought herein.

8. Accordingly, in order to preserve the confidential nature of the material Citibank has designated, Solus requests that the Court grant this Motion to Seal and allow Solus to file under seal a full and unredacted version of the Motion and the exhibits accompanying the Motion that are the source of the redacted material. *See* 11 U.S.C. § 107; P.R. LBR 9018-1; Fed. R. Bankr. P. 9018 (upon request, the bankruptcy court may "make any order which justice requires," in order to "protect . . . any entity in respect of a trade secret or other confidential research, development, or commercial information"). The redactions applied to the Motion were made in good faith to preserve the confidential nature of the material sought to be sealed and are justified, narrowly tailored and consistent with the presumption in favor of public access to judicial documents. *See Gitto v. Worcester Telegram & Gazette Corp. (In re Gitto Glob. Corp.),* No. CIV.A. 05-10334-DPW, 2005 WL 1027348, at \*10 (D. Mass. May 2, 2005), aff'd 422 F.3d 1 (1st Cir. 2005). If at any point the Court orders that the full and unredacted version of the Motion or any of the exhibits be filed on the public docket, Solus will comply.

**NOTICE**

9. Notice of this Motion to Seal has been provided in accordance with Paragraph II of the Case Management Order.

**CERTIFICATION**

10. Pursuant to Local Rule 9013-1 and paragraph I.H of the Case Management Procedures, Solus hereby certifies that it has (a) carefully examined the matter and concluded that there is a true need for an urgent hearing; (b) not created the urgency through a lack of due diligence; (c) made a bona fide effort to resolve the matter without a hearing; (d) made reasonable, good faith communications in an effort to resolve or narrow the issues being brought to the court; and (e) conferred with Citibank N.A., who have not informed of any intent to oppose the relief requested herein.

**CONCLUSION**

11. For the foregoing reasons, Solus respectfully requests that the Court grant the Motion to Seal and enter an order substantially in the form attached hereto as **Exhibit A**.

Dated: July 16, 2019

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Respectfully Submitted,

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